

**OFFICE OF LEGISLATIVE COUNSEL
DRAFT BILL**

RN: 1005643

This request was prepared for you in accordance with instructions provided to us by John Fitzpatrick.

LCB Deputy Contact: Ms. Cameron Rhudy at 341-8267.

The boxes checked below, if any, apply to this request:

- ☐ **Cover letter:** This request is accompanied by a cover letter, to bring to your attention legal or practical issues that may be raised by this bill, if introduced.

- ☐ **Appropriation bill:** This bill, if introduced, will constitute an appropriation bill that the California Constitution prohibits the Legislature from sending to the Governor before the Budget Bill is finally enacted, unless it is recommended by the Governor as an emergency bill (see subd. (c), Sec. 12, Art. IV, Cal. Const.).

- ☒ **Unbacked bill:** The attached bill draft has **not** been backed for introduction. When a Member has decided to introduce this bill draft, the draft should be returned to the Office of Legislative Counsel as soon as possible so that it can be prepared for introduction by that Member.

- ☐ **Spot bill:** This bill, if introduced, may not be qualified for referral to a committee, if it is deemed a bill that makes no substantive change in or addition to existing law, or that would not otherwise affect the ongoing operations of state or local government (see, for example, Assembly Rule 51.5).

- ☐ **Reintroduced bill:** This bill, if introduced, may violate the rule that, except as specified, a Member may not author a bill during a session that would have substantially the same effect as a bill he or she previously introduced during that session (Joint Rule 54(c)).

An act to amend Sections 12301.24, 12301.25, 12301.6, 12305.73, 12305.81, 12305.82, and 12305.86 of the Welfare and Institutions Code, relating to in-home supportive services, and declaring the urgency thereof, to take effect immediately.



100564304607BILL

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 12301.24 of the Welfare and Institutions Code is amended to read:

12301.24. (a) Effective November 1, 2009, all prospective providers must complete a provider orientation at the time of enrollment, as developed by the department, in consultation with counties, which shall include, but is not limited to, all of the following:

- (1) The requirements to be an eligible IHSS provider.
- (2) A description of the IHSS program.
- (3) The rules, regulations, and provider-related processes and procedures, including timesheets.
- (4) The consequences of committing fraud in the IHSS program.
- (5) The Medi-Cal toll-free telephone fraud hotline and Internet Web site for reporting suspected fraud or abuse in the provision or receipt of supportive services.

(b) In order to complete provider enrollment, at the conclusion of the provider orientation, all applicants shall sign and submit a statement specifying that the provider agrees to all of the following:

- (1) He or she will provide to a recipient the authorized services.
- (2) He or she has received a demonstration of, and understands, timesheet requirements, including content, signature, and fingerprinting, when implemented.
- (3) He or she shall cooperate with state or county staff to provide any information necessary for assessment or evaluation of a case.



(4) He or she understands and agrees to program expectations and is aware of the measures that the state or county may take to enforce program integrity.

(5) He or she has attended the provider orientation and understands that failure to comply with program rules and requirements may result in the provider being terminated from providing services through the IHSS program.

(c) Between November 1, 2009, and June 30, 2010, all current providers shall receive the information described in this section. Following receipt of this information, a provider shall submit a signed agreement, consistent with the requirements of this section, to the appropriate county office.

(d) The county shall indefinitely retain ~~this~~ the statement submitted pursuant to subdivision (b) or (c) in the provider's file. Refusal of the provider to sign and submit the statement described in subdivision (b) or (c), as applicable, shall result in the provider being ineligible to receive payment for the provision of services and participate as a provider in the IHSS program.

SEC. 2. Section 12301.25 of the Welfare and Institutions Code is amended to read:

12301.25. (a) Notwithstanding any other provision of law, the standardized provider timesheet used to track the work performed by providers of services under this article shall contain both of the following:

(1) A certification to be signed by the provider and recipient, verifying that the information provided in the timesheet is true and correct.

(2) A statement that the provider or recipient may be subject to civil penalties if the information provided is found not to be true and correct.



(b) A person who is convicted of fraud, as defined in subdivision (a) of Section 12305.8, ~~resulting from intentional deception or misrepresentation~~ in the provision of timesheet information under this section shall, in addition to any criminal penalties imposed, be subject to a civil penalty of at least five hundred dollars (\$500), but not to exceed one thousand dollars (\$1,000), for each violation.

(c) Effective July 1, 2011, the standardized provider timesheet shall also contain designated spaces for the index fingerprint of the provider and the recipient. The provider and the recipient shall place their respective index fingerprint in the designated location on the timesheet in order for the timesheet to be eligible for payment. An individual who is a minor or who is physically unable to provide an index fingerprint due to amputation or other physical limitations shall be exempt from the requirement to provide an index fingerprint under this section, and documentation of this exemption shall be maintained in the recipient or provider file, as applicable.

SEC. 3. Section 12301.6 of the Welfare and Institutions Code is amended to read:

12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a county board of supervisors may, at its option, elect to do either of the following:

(1) Contract with a nonprofit consortium to provide for the delivery of in-home supportive services.

(2) Establish, by ordinance, a public authority to provide for the delivery of in-home supportive services.

(b) (1) To the extent that a county elects to establish a public authority pursuant to paragraph (2) of subdivision (a), the enabling ordinance shall specify the membership



of the governing body of the public authority, the qualifications for individual members, the manner of appointment, selection, or removal of members, how long they shall serve, and other matters as the board of supervisors deems necessary for the operation of the public authority.

(2) A public authority established pursuant to paragraph (2) of subdivision (a) shall be both of the following:

(A) An entity separate from the county, and shall be required to file the statement required by Section 53051 of the Government Code.

(B) A corporate public body, exercising public and essential governmental functions and that has all powers necessary or convenient to carry out the delivery of in-home supportive services, including the power to contract for services pursuant to Sections 12302 and 12302.1 and that makes or provides for direct payment to a provider chosen by the recipient for the purchase of services pursuant to Sections 12302 and 12302.2. Employees of the public authority shall not be employees of the county for any purpose.

(3) (A) As an alternative, the enabling ordinance may designate the board of supervisors as the governing body of the public authority.

(B) Any enabling ordinance that designates the board of supervisors as the governing body of the public authority shall also specify that no fewer than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or recipients of services under this article.



(C) If the enabling ordinance designates the board of supervisors as the governing body of the public authority, it shall also require the appointment of an advisory committee of not more than 11 individuals who shall be designated in accordance with subparagraph (B).

(D) Prior to making designations of committee members pursuant to subparagraph (C), or governing body members in accordance with paragraph (4), the board of supervisors shall solicit recommendations of qualified members of either the governing body of the public authority or of any advisory committee through a fair and open process that includes the provision of reasonable written notice to, and a reasonable response time by, members of the general public and interested persons and organizations.

(4) If the enabling ordinance does not designate the board of supervisors as the governing body of the public authority, the enabling ordinance shall require the membership of the governing body to meet the requirements of subparagraph (B) of paragraph (3).

(c) (1) Any public authority created pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients under paragraph (3) of subdivision (e) within the meaning of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code. Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services to them.

(2) (A) Any nonprofit consortium contracting with a county pursuant to this section shall be deemed to be the employer of in-home supportive services personnel



referred to recipients pursuant to paragraph (3) of subdivision (e) for the purposes of collective bargaining over wages, hours, and other terms and conditions of employment.

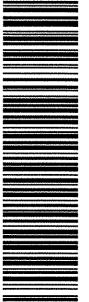
(B) Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services for them.

(d) A public authority established pursuant to this section or a nonprofit consortium contracting with a county pursuant to this section, when providing for the delivery of services under this article by contract in accordance with Sections 12302 and 12302.1 or by direct payment to a provider chosen by a recipient in accordance with Sections 12302 and 12302.2, shall comply with and be subject to, all statutory and regulatory provisions applicable to the respective delivery mode.

(e) Any nonprofit consortium contracting with a county pursuant to this section or any public authority established pursuant to this section shall provide for all of the following functions under this article, but shall not be limited to those functions:

(1) The provision of assistance to recipients in finding in-home supportive services personnel through the establishment of a registry.

(2) (A) (i) The investigation of the qualifications and background of potential personnel. ~~Upon the effective date of the amendments to this section made during the 2009-10 Fourth Extraordinary Session of the Legislature Commencing November 1, 2009,~~ the investigation with respect to any provider in who is on the registry or is a prospective registry applicant, shall include criminal background checks requested by the nonprofit consortium or public authority and conducted by the Department of Justice pursuant to Section 15660, ~~for those public authorities or nonprofit consortia using the agencies on the effective date of the amendments to this section made during~~



~~the 2009–10 Fourth Extraordinary Session of the Legislature. In addition, the~~
Department of Justice shall conduct a state-level criminal offender record information
search for any provider who is on the registry or is a prospective registry applicant,
and is unlicensed and provides nonmedical domestic or personal care to an aged or
disabled adult in the adult's own home or a minor in the home of the minor's parent
or legal guardian. Criminal background checks shall be performed no later than July
1, 2010, for any provider who is already on the registry ~~on the effective date of~~
~~amendments to this section made during the 2009–10 Fourth Extraordinary Session of~~
~~the Legislature as of November 1, 2009,~~ for whom a criminal background check
pursuant to this section has not previously been ~~provided~~ conducted, as a condition of
the provider's continued enrollment in the IHSS program. Criminal background checks
shall be conducted at the prospective registry applicant's or the provider's expense.

(ii) Upon notice from the Department of Justice notifying the public authority
or nonprofit consortium that the prospective registry applicant has been convicted of
a criminal offense specified in Section 12305.81, the public authority or nonprofit
consortium shall deny the request to be placed on the registry for providing supportive
services to any recipient of the In-Home Supportive Services program.

(B) (i) ~~If an applicant or provider is rejected as a result of information contained~~
~~in the criminal background report, the applicant or provider shall receive a copy of his~~
~~or her own criminal history record from the Department of Justice, as provided in~~
~~Article 5 (commencing with Section 11120) of Chapter 1 of Title 1 of Part 4 of the~~
~~Penal Code, to review the information for accuracy and completeness. The applicant~~
~~or provider shall be advised that if, upon review of his or her own criminal history~~



~~record he or she finds the information to be inaccurate or incomplete, the applicant or provider shall have the right to submit a formal challenge to the Department of Justice to contest the criminal background report.~~ Notwithstanding any other provision of law, the public authority or nonprofit consortium is authorized to provide an individual with a copy of his or her state-level criminal offender record information search response as provided to that entity by the Department of Justice if the individual has been denied placement on the registry for providing supportive services to any recipient of the In-Home Supportive Services program based on this information and the individual makes a written request to the entity for a copy specifying an address to which it is to be sent. The state-level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in the written request. The public authority or nonprofit consortium shall retain a copy of the department's written request, the response, and the date the copy of the response was provided to the individual.

(ii) The department shall develop a written appeal process for the current and prospective providers who are determined ineligible to receive payment for the provision of services in the In-Home Supportive Services program. Notwithstanding any other provision of law, the public authority or nonprofit consortium is authorized to provide the department with a copy of the state-level criminal offender record information search response as provided to that entity by the Department of Justice for any individual that has been denied placement on the registry for providing supportive services to any recipient of the In-Home Supportive Services program based on this information if the



department makes a written request to the entity for a copy specifying an address to which it is to be sent. The state-level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the department in the written request. The public authority or nonprofit consortium shall retain a copy of the department's written request, the response, and the date the copy of the response was provided to the department.

~~(C) An applicant shall be informed of his or her right to a waiver of the fee for obtaining a copy of a criminal history record, and of how to submit a claim and proof of indigency, as required by Section 11123 of the Penal Code.~~

~~(D)~~

(C) Nothing in this paragraph shall be construed to prohibit the Department of Justice from assessing a fee pursuant to Section 11105 or 11123 of the Penal Code to cover the cost of furnishing summary criminal history information state-level criminal offender record information response.

~~(E)~~

(D) As used in this section, "nonprofit consortium" means a nonprofit public benefit corporation that has all powers necessary to carry out the delivery of in-home supportive services under the delegated authority of a government entity.

(3) Establishment of a referral system under which in-home supportive services personnel shall be referred to recipients.

(4) Providing for training for providers and recipients.



(5) (A) Performing any other functions related to the delivery of in-home supportive services.

(B) (i) Upon request of a recipient of in-home supportive services pursuant to this chapter, or a recipient of personal care services under the Medi-Cal program pursuant to Section 14132.95, a public authority or nonprofit consortium may provide a criminal background check on a nonregistry applicant or provider from the Department of Justice, in accordance with clause (i) of subparagraph (A) of paragraph (2) of subdivision (e). If the person who is the subject of the criminal background check is not hired or is terminated because of the information contained in the criminal background report, the provisions of subparagraph (B) of paragraph (2) of subdivision (e) shall apply.

(ii) A recipient of in-home supportive services pursuant to this chapter or a recipient of personal care services under the Medi-Cal program may elect to employ an individual as their service provider notwithstanding the individual's record of previous criminal convictions, unless those convictions include any of the offenses specified in Section 12305.81.

(6) Ensuring that the requirements of the personal care option pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are met.

(f) (1) Any nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section shall be deemed not to be the employer of in-home supportive services personnel referred to recipients under



this section for purposes of liability due to the negligence or intentional torts of the in-home supportive services personnel.

(2) In no case shall a nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section be held liable for action or omission of any in-home supportive services personnel whom the nonprofit consortium or public authority did not list on its registry or otherwise refer to a recipient.

(3) Counties and the state shall be immune from any liability resulting from their implementation of this section in the administration of the In-Home Supportive Services program. Any obligation of the public authority or consortium pursuant to this section, whether statutory, contractual, or otherwise, shall be the obligation solely of the public authority or nonprofit consortium, and shall not be the obligation of the county or state.

(g) Any nonprofit consortium contracting with a county pursuant to this section shall ensure that it has a governing body that complies with the requirements of subparagraph (B) of paragraph (3) of subdivision (b) or an advisory committee that complies with subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

(h) Recipients of services under this section may elect to receive services from in-home supportive services personnel who are not referred to them by the public authority or nonprofit consortium. Those personnel shall be referred to the public authority or nonprofit consortium for the purposes of wages, benefits, and other terms and conditions of employment.

(i) (1) Nothing in this section shall be construed to affect the state's responsibility with respect to the state payroll system, unemployment insurance, or workers'



compensation and other provisions of Section 12302.2 for providers of in-home supportive services.

(2) The Controller shall make any deductions from the wages of in-home supportive services personnel, who are employees of a public authority pursuant to paragraph (1) of subdivision (c), that are agreed to by that public authority in collective bargaining with the designated representative of the in-home supportive services personnel pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code and transfer the deducted funds as directed in that agreement.

(3) Any county that elects to provide in-home supportive services pursuant to this section shall be responsible for any increased costs to the in-home supportive services case management, information, and payrolling system attributable to that election. The department shall collaborate with any county that elects to provide in-home supportive services pursuant to this section prior to implementing the amount of financial obligation for which the county shall be responsible.

(j) To the extent permitted by federal law, personal care option funds, obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, along with matching funds using the state and county sharing ratio established in subdivision (c) of Section 12306, or any other funds that are obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, may be used to establish and operate an entity authorized by this section.



(k) Notwithstanding any other provision of law, the county, in exercising its option to establish a public authority, shall not be subject to competitive bidding requirements. However, contracts entered into by either the county, a public authority, or a nonprofit consortium pursuant to this section shall be subject to competitive bidding as otherwise required by law.

(l) (1) The department may adopt regulations implementing this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, the adoption of the regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these emergency regulations shall not be subject to the review and approval of the Office of Administrative Law.

(2) Notwithstanding subdivision (h) of Section 11346.1 and Section 11349.6 of the Government Code, the department shall transmit these regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing by the Secretary of State.

(3) Except as otherwise provided for by Section 10554, the Office of Administrative Law shall provide for the printing and publication of these regulations in the California Code of Regulations. Emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 180 days.



(m) (1) In the event that a county elects to form a nonprofit consortium or public authority pursuant to subdivision (a) before the State Department of Health Care Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95, all of the following shall apply:

(A) Subdivision (d) shall apply only to those matters that do not require federal approval.

(B) The second sentence of subdivision (h) shall not be operative.

(C) The nonprofit consortium or public authority shall not provide services other than those specified in paragraphs (1), (2), (3), (4), and (5) of subdivision (e).

(2) Paragraph (1) shall become inoperative when the State Department of Health Care Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95.

~~(n) (1) One year after the effective date of the first approval by the department granted to the first public authority, the Bureau of State Audits shall commission a study to review the performance of that public authority.~~

~~(2) The study shall be submitted to the Legislature and the Governor not later than two years after the effective date of the approval specified in subdivision (a). The study shall give special attention to the health and welfare of the recipients under the public authority, including the degree to which all required services have been delivered, out-of-home placement rates, prompt response to recipient complaints, and any other issue the director deems relevant.~~



~~(3) The report shall make recommendations to the Legislature and the Governor for any changes to this section that will further ensure the well-being of recipients and the most efficient delivery of required services.~~

~~(o) Commencing July 1, 1997, the department shall provide annual reports to the appropriate fiscal and policy committees of the Legislature on the efficacy of the implementation of this section, and shall include an assessment of the quality of care provided pursuant to this section.~~

~~(p) (1) Notwithstanding any other provision of law, and except as provided in paragraph (2), the department shall, no later than January 1, 2009, implement subparagraphs (A) and (B) through an all county letter from the director:~~

~~(A) Subparagraphs (A) and (B) of paragraph (2) of subdivision (e).~~

~~(B) Subparagraph (B) of paragraph (5) of subdivision (e).~~

~~(2) The department shall, no later than July 1, 2009, adopt regulations to implement subparagraphs (A) and (B) of paragraph (1).~~

~~(q) The amendments made to paragraphs (2) and (5) of subdivision (e) made by the act that added this subdivision during the 2007-08 Regular Session of the Legislature shall only be implemented to the extent that an appropriation is made in the annual Budget Act or other statute, except for the amendments that added subparagraph (D) of paragraph (2) of subdivision (e), which shall go into effect January 1, 2009.~~

SEC. 4. Section 12305.73 of the Welfare and Institutions Code is amended to read:

12305.73. (a) The department, in consultation with the county welfare departments, shall develop protocols and procedures for obtaining fingerprint images



of all individuals who are being assessed or reassessed to receive supportive services under this chapter.

(b) (1) For any recipient whose initial client assessment occurs on or after April 1, 2010, he or she shall be fingerprinted at the same time of initial assessment by a social worker or designated county representative, in the recipient's home, as specified in the protocols and procedures developed by this section.

(2) For any recipient already receiving in-home supportive services on April 1, 2010, during the recipient's next reassessment, a social worker or designated county representative shall obtain fingerprint images for that recipient, in the recipient's home, pursuant to this section.

(c) Fingerprint imaging information obtained from a recipient pursuant to this section shall remain confidential, and shall only be used for identification purposes directly connected with the provision of supportive services to that recipient and program integrity.

(d) An individual who is a minor or who is physically unable to provide fingerprints due to amputation or other physical limitations shall be exempt from any requirement to provide fingerprints under this section.

(e) Upon completion of the development of protocols and procedures pursuant to subdivision (a), the department shall be authorized to take the necessary steps to implement this section by April 1, 2010.

SEC. 5. Section 12305.81 of the Welfare and Institutions Code is amended to read:

12305.81. (a) Notwithstanding any other law, ~~a~~:



(1) A person shall not be eligible to provide or receive payment for providing supportive services for 10 years following a conviction for, or incarceration following a conviction for, fraud against a government health care or supportive services program, including Medicare, Medicaid, or services provided under Title IV, Title V, Title XX, or Title XXI of the federal Social Security Act or a violation of subdivision (a) of Section 273a of the Penal Code, or Section 368 of the Penal Code, or similar violations in another jurisdiction. The.

(2) A person shall not be eligible to provide or receive payment for providing supportive services for 10 years following a conviction for, or incarceration following a conviction for a violation or attempted violation of Section 729 of the Business and Professions Code, Section 37, 128, 136.1, 186.22, 187, 191.5, 192, 203, 205, 206, 207, 209, 209.5, 210, 210.5, 211, 214, 215, 218, 219, 220, 222, 243.4, or 245, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, 264.1, 265, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, or 272, subdivision (a) of Section 273a, Section 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 289.5, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, or 311.11, subdivision (1) or (2) of Section 314, subdivision (a) of Section 347, Section 368, subdivision (b) of Section 417, subdivision (a) of Section 451, Section 459, 470, 475, 484, 484b, 484e, 484f, 484g, 484h, 484i, 484j, 487, 488, 496, 503, 518, or 647.6, subdivision (c) of Section 653f, Section 666, paragraph (7) or (8) of subdivision (c) of Section 667.5, paragraph (1) or (2) of subdivision (b), or subdivision (c) of Section 11418, Section 12308, 12309, 12310, or 12022.53 of the



Penal Code, or similar violations in another jurisdiction, or for any crime that serves as grounds for Medicaid suspension pursuant to Part 1001 or 1003 of Title 42 of the Code of Federal Regulations.

(3) For the purposes of determining eligibility to provide or receive payment for providing supportive services, subdivision (a) of Section 14043.36, Section 14043.6, and Section 14123 shall not apply.

(b) The department and the State Department of Health Care Services shall develop a provider enrollment form that each person seeking to provide supportive services shall complete, sign under penalty of perjury, and submit to the county. Submission of the form shall include the photocopying by the county of original documentation verifying the provider's identity, and shall be considered as an application to render services under the Medi-Cal program consistent with subdivision (c) of Section 14043.1. A provider shall submit the form to the county in person, and the county shall retain the form and a copy of the identification documentation in the file of the provider. The form shall contain statements to the following effect:

(1) A person who, in the last 10 years, has been convicted for, or incarcerated following conviction for, fraud against a government health care or supportive services program is not eligible to be enrolled as a provider or to receive payment for providing supportive services.

(2) An individual who, in the last 10 years, has been convicted for, or incarcerated following conviction for, ~~a violation of subdivision (a) of Section 273a of the Penal Code or Section 368 of the Penal Code, or similar violations in another jurisdiction,~~ a violation or attempted violation of Section 729 of the Business and Professions Code,



Section 37, 128, 136.1, 186.22, 187, 191.5, 192, 203, 205, 206, 207, 209, 209.5, 210, 210.5, 211, 214, 215, 218, 219, 220, 222, 243.4, or 245, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, 265, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, or 272, subdivision (a) of Section 273a, Section 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 289.5, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, or 311.11, subdivision (1) or (2) of Section 314, subdivision (a) of Section 347, Section 368, subdivision (b) of Section 417, subdivision (a) of Section 451, Section 459, 470, 475, 484, 484b, 484e, 484f, 484g, 484h, 484i, 484j, 487, 488, 496, 503, 518, or 647.6, subdivision (c) of Section 653f, Section 666, paragraph (7) or (8) of subdivision (c) of Section 667.5, paragraph (1) or (2) of subdivision (b), or subdivision (c) of Section 11418, Section 12308, 12309, 12310, or 12022.53 of the Penal Code, or similar violations in another jurisdiction, or for any crime that serves as grounds for Medicaid suspension pursuant to Part 1001 or 1003 of Title 42 of the Code of Federal Regulations, is not eligible to be enrolled as a provider or to receive payment for providing supportive services.

(3) A statement declaring that the person has not, in the last 10 years, been convicted or incarcerated following conviction for a crime involving fraud against a government health care or supportive services program.

(4) A statement declaring that he or she has not, in the last 10 years, been convicted for, or incarcerated following conviction for, ~~a violation of subdivision (a) of Section 273a of the Penal Code or Section 368 of the Penal Code, or similar violations~~



in another jurisdiction, a violation or attempted violation of Section 729 of the Business and Professions Code, Section 37, 128, 136.1, 186.22, 187, 191.5, 192, 203, 205, 206, 207, 209, 209.5, 210, 210.5, 211, 214, 215, 218, 219, 220, 222, 243.4, or 245, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, 265, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, or 272, subdivision (a) of Section 273a, Section 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 289.5, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, or 311.11, subdivision (1) or (2) of Section 314, subdivision (a) of Section 347, Section 368, subdivision (b) of Section 417, subdivision (a) of Section 451, Section 459, 470, 475, 484, 484b, 484e, 484f, 484g, 484h, 484i, 484j, 487, 488, 496, 503, 518, or 647.6, subdivision (c) of Section 653f, Section 666, paragraph (7) or (8) of subdivision (c) of Section 667.5, paragraph (1) or (2) of subdivision (b), or subdivision (c) of Section 11418, Section 12308, 12309, 12310, or 12022.53 of the Penal Code, or similar violations in another jurisdiction, or for any crime that serves as grounds for Medicaid suspension pursuant to Part 1001 or 1003 of Title 42 of the Code of Federal Regulations.

(5) The person agrees to reimburse the state for any overpayment paid to the person as determined in accordance with Section 12305.83, and that the amount of any overpayment, individually or in the aggregate, may be deducted from any future warrant to that person for services provided to any recipient of supportive services, as authorized in Section 12305.83.



~~(b) The department shall include the text of subdivision (a) of Section 273a of the Penal Code and Section 368 of the Penal Code on the provider enrollment form.~~

(c) A public authority or nonprofit consortium that is notified by the department or the State Department of Health Care Services that a supportive services provider is ineligible to receive payments under this chapter or under Medi-Cal law shall exclude that provider from its registry.

(d) A public authority or nonprofit consortium that determines that a registry provider is not eligible to provide supportive services receive payment under this chapter or under Medi-Cal law based on the requirements of subdivision (a) shall report that finding to the department and shall remove that provider from the registry.

(e) In accordance with Title XIX (42 U.S.C. Sec. 1396 et seq.) of the federal Social Security Act, the State Department of Health Care Services shall seek approval of any amendments to the state plan necessary to implement and receive federal financial participation for the purposes of this section.

(f) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement and administer this section through all-county letters or similar instructions from the department until regulations are adopted. The department shall adopt emergency regulations implementing this section no later than July 1, 2011. The department may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.



(2) The initial adoption of emergency regulations implementing this section and one readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this subdivision shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

(g) The amendments made to this section shall become operative on the first day of the first calendar month following 90 days after the effective date of the act that adds this subdivision.

SEC. 6. Section 12305.82 of the Welfare and Institutions Code is amended to read:

12305.82. (a) In addition to its existing authority under the Medi-Cal program, the State Department of Health Care Services shall have the authority to investigate fraud in the provision or receipt of in-home supportive services. Counties shall also have the authority to investigate fraud in the provision or receipt of in-home supportive services pursuant to the protocols developed in subdivision (b). The department, the State Department of Health Care Services, and counties, including county quality assurance staff, shall work together as appropriate to coordinate activities to detect and prevent fraud by in-home supportive services providers and recipients in accordance



with federal and state laws and regulations, including applicable due process requirements, to take appropriate administrative action relating to suspected fraud in the provision or receipt of in-home supportive services, and to refer suspected criminal offenses to appropriate law enforcement agencies for prosecution.

(b) (1) The department, in consultation with county welfare directors and other stakeholders, as appropriate, shall develop uniform statewide protocols for acceptable activities to be performed and acceptable measures to be taken by the department, the State Department of Health Care Services, and the counties for purposes of fraud prevention.

(2) The State Department of Health Care Services, the department, and the county may share data with each other as necessary to prevent fraud and investigate suspected fraud pursuant to this section. The information shall only be used for purposes of preventing and investigating suspected fraud in the In-Home Supportive Services program and Medi-Cal programs, and shall otherwise remain confidential.

(c) If the State Department of Health Care Services concludes that there is reliable evidence that a provider or recipient of supportive services has engaged in fraud in connection with the provision or receipt of in-home supportive services or Medi-Cal benefits, the State Department of Health Care Services shall notify the department, the county, and the county's public authority or nonprofit consortium, if any, of that conclusion.

(d) If a county concludes that there is reliable evidence that a supportive services provider or recipient has engaged in fraud in connection with the provision or receipt



of in-home supportive services or Medi-Cal benefits, the county shall notify the department and the State Department of Health Care Services of that conclusion.

~~(c) Notwithstanding any other provision of law, a county may investigate suspected fraud in connection with the provision or receipt of supportive services, with respect to an overpayment of five hundred dollars (\$500) or less.~~

~~(f)~~

~~(e)~~ The failure of a provider or a recipient to comply with program requirements ~~may~~ shall result in termination of his or her participation in the In-Home Supportive Services program, subject to all applicable federal and state due process requirements.

SEC. 7. Section 12305.86 of the Welfare and Institutions Code is amended to read:

12305.86. (a) Effective October 1, 2009, a county shall investigate the background of a person who seeks to become a supportive services provider and who is not listed on the registry of a public authority or nonprofit consortium pursuant to Section 12301.6. This investigation shall include criminal background checks conducted by the Department of Justice pursuant to Section 15660. In addition, the Department of Justice shall conduct a state-level criminal offender record information search for any person who seeks to become an in-home supportive services provider, is not listed on the registry of a public authority or nonprofit consortium pursuant to Section 12301.6, and is unlicensed and provides nonmedical domestic or personal care to an aged or disabled adult in the adult's own home or a minor in the home of the minor's parent or legal guardian.



(b) No later than July 1, 2010, the county shall complete a criminal background check pursuant to subdivision (a) for a provider who is providing in-home supportive services prior to October 1, 2009, and who is not listed on a public authority or nonprofit consortium registry, as a condition of the provider's continued enrollment in the IHSS program. Criminal background checks shall be conducted at the prospective provider's or provider's expense.

(c) Upon notice from the Department of Justice that a prospective or current provider has been convicted of a criminal offense specified in Section 12305.81, the county shall deny or terminate the applicant's request to become a provider of supportive services to any recipient of the In-Home Supportive Services program.

~~(1) If an applicant or provider is rejected as a result of information contained in the criminal background report, the applicant or provider shall receive a copy of his or her own criminal history record from the Department of Justice, as provided in Article 5 (commencing with Section 11120) of Chapter 1 of Title 1 of Part 4 of the Penal Code, to review the information for accuracy and completeness. The applicant or provider shall be advised that if, upon review of his or her own criminal history record, he or she finds the information to be inaccurate or incomplete, the applicant or provider shall have the right to submit a formal challenge to the Department of Justice to contest the criminal background report. Notwithstanding any other provision of law, the county may provide an individual with a copy of his or her state-level criminal offender record information search response as provided to the county by the Department of Justice if the individual's application for providing supportive services to any recipient of the In-Home Supportive Services program has been denied based~~



on this information and the individual makes a written request to the entity for a copy specifying an address to which it is to be sent. The state-level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in their written request. The county shall retain a copy of the individual's written request, the response, and the date the copy of the response was provided to the individual.

(2) The department shall develop a written appeal process for the current and prospective providers who are determined ineligible to receive payment for the provision of services under the In-Home Supportive Services program.

(3) ~~An applicant shall be informed of his or her right to a waiver of the fee for obtaining a copy of a criminal history record, and of how to submit a claim and proof of indigency, as required by Section 11123 of the Penal Code. Notwithstanding any other provision of law, the county may provide the department with a copy of the state-level criminal offender record information search response as provided to the county by the Department of Justice for any individual that has been determined ineligible for providing supportive services to any recipient of the In-Home Supportive Services program based on this information if the department makes a written request to the county for a copy specifying an address to which it is to be sent. The state-level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the department in the written request. The county shall~~



retain a copy of the department's written request, the response, and the date the copy of the response was provided to the department.

(d) Nothing in this section shall be construed to prohibit the Department of Justice from assessing a fee pursuant to Section 11105 ~~or 11123~~ of the Penal Code to cover the cost of furnishing summary criminal history information.

(e) The department shall seek federal financial participation, to the extent possible, to cover any costs associated with this section.

(f) Counties and the state shall be immune from any liability resulting from the implementation of this section in the administration of the In-Home Supportive Services program.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.



SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make changes necessary for the implementation of the Budget Act of 2010, it is necessary that this act take effect immediately.

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100564304607BILL

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: In-home supportive services.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which, either through employment by the recipient, by or through contract by the county, by the creation of a public authority, or pursuant to a contract with a nonprofit consortium, qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes.

Existing law requires, commencing November 1, 2009, all prospective IHSS providers to complete a provider orientation and sign a statement specifying that the provider agrees to certain statements, as prescribed. Existing law requires, all current IHSS providers, as of November 1, 2009, and until June 30, 2010, to sign and submit a signed agreement following the receipt of information consistent with the provider orientation. Existing law provides that refusal to sign the statement as required above



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shall result in the provider being ineligible to receive payment for the provision of services or to participate in the IHSS program.

This bill would specify that prospective IHSS providers are also required submit the statement in addition to signing it as required above and that refusal by either prospective or current IHSS providers to submit the statement would result in the provider being ineligible.

Existing law provides that a person who is convicted of fraud, as defined, resulting from intentional deception or misrepresentation in the provision of IHSS provider timesheet information shall, in addition to any criminal penalties imposed, be subject to a civil penalty of at least \$500, but not to exceed \$1,000.

This bill would eliminate the requirement that the fraud must result from intentional deception or misrepresentation.

Existing law requires a nonprofit consortium or public authority to provide for the provision of assistance to recipients in finding IHSS services personnel through the establishment of a registry. Existing law requires the nonprofit consortium or public authority to investigate the qualifications and background of potential personnel and requires the investigation to include a criminal background check conducted by the Department of Justice, as prescribed. Existing law also requires a county, commencing October 1, 2009, to conduct a background check on a person that seeks to become an IHSS provider and who is not listed on the registry of a public authority or nonprofit consortium.

This bill would also require these background checks to include a state-level criminal offender record information search.



This bill would authorize a nonprofit consortium, a public authority, or a county to provide the individual and the department with a copy of the state-level criminal offender record information response upon written request, as prescribed.

By increasing county duties with respect to the program, this bill would impose a state-mandated local program.

Existing law provides that counties and the state shall be immune from any liability in the administration of the IHSS program by a nonprofit consortium or a public authority.

This bill would also provide that counties and the state shall be immune from any liability resulting from implementation of the provisions relating to investigating the background of those seeking to become an IHSS provider and who are not listed on the registry of a public authority or nonprofit consortium.

Existing law provides that for any recipient of IHSS services whose initial client assessment occurs on or after April 1, 2010, or who is already receiving IHSS services on April 1, 2010, the recipient shall be fingerprinted by a social worker, as prescribed.

This bill would also permit a designated county representative to fingerprint the recipient.

Existing law provides that a person shall not be eligible to provide or receive payment for providing IHSS services for 10 years following a conviction for, or incarceration following a conviction for, fraud against a government health care or supportive services program, including Medicare, Medicaid or other services, as specified, provided under the federal Social Security Act, or for other specified crimes.



This bill would provide that a person shall also be ineligible as specified above if the fraud committed was against a program providing services under the federal Temporary Aid to Needy Families (TANF) block grant program. This bill would provide that a person would also be ineligible for 10 years after a conviction for, or incarceration following a conviction for, various additional crimes. This bill would provide that a person would also be ineligible for the conviction for, or incarceration following a conviction for, the attempted violation of one of the specified crimes.

Existing law requires the department, and the State Department of Health Care Services, to develop a provider enrollment form that each person seeking to provide IHSS services shall complete and sign under penalty of perjury, and submit to the county. The provider enrollment form is required to contain several statements, including, among others, that the person declares that he or she has not been convicted for, or incarcerated following a conviction for, a crime mentioned above that would render the person ineligible to provide or receive payment for providing IHSS services.

This bill would require that the provider enrollment form also include statements consistent with the changes this bill would make expanding the grounds under which a person would be ineligible to provide or receive payment for providing IHSS services mentioned above. Because this bill would expand the definition of the crime of perjury, it would impose a state-mandated local program.

Existing law permits a county to investigate suspected fraud in connection with the provision or receipt of IHSS services, with respect to an overpayment of \$500 or less.

This bill would delete this provision.



Existing law provides that the failure of a provider or recipient of IHSS services to comply with program requirements may result in termination of his or her participation in the IHSS program.

This bill would, instead, provide that failure to comply with requirements would require termination of the person's participation in the program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

